



COOLIDGE WALL

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March 23, 2015

Margaret Herring, Civil Investigator
USEPA, Region 5
Superfund Division
Enforcement and Compliance Assurance Branch (SE-5J)
Chicago, IL 60604-3590

Re: Response to Request for Information for the South Dayton Dump

Dear Ms. Herring:

On behalf of our client, Fickert Devco, Inc. ("Devco"), I am responding to the above-referenced request for information (the "Request")¹. As an initial matter, we appreciate the USEPA's willingness to limit the scope of the current Request to 1941 to 1996 and to operations within a fifty (50) mile radius of the South Dayton Dump (the "Site").

However, the Request still goes beyond the USEPA's authority under section 104(e) of CERCLA and Devco objects to the same. CERCLA permits questions limited to the identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a facility (the Site), the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from the Site, and information relating to the ability of a person to pay or to perform a cleanup at the Site. Many of the items in the Request do not conform to these specific areas of inquiry. Likewise, the USEPA's request for a certification and for supplementation of responses is not required by CERCLA.

Additionally, Devco objects to each request to the extent that it may seek information protected by the attorney-client and/or work product privileges, is vague, overbroad, and/or ambiguous. Moreover, Devco objects to the Request because it appears that many of the items listed are cumulative and/or may call for the production of information that is already in the USEPA's control or the public record.

¹ By e-mail dated March 12, 2015, Thomas Nash, Esq. of USEPA confirmed that Devco could have until March 23, 2015 to respond to this request for information.

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Subject to and without waiving these objections, Devco's responses to the Request are set forth below:

1. Identify all persons consulted in the preparation of the answers to these questions.

Response: Rob Fickert and Darrell Fickert.

2. Identify all documents consulted, examined or referred to in the preparation of the answers to these questions, and provide copies of all such documents.

Response: No historical documents for the time period covered by these requests (1941-1996) were consulted in the preparation of these answers as Devco is not in possession of any such documents. The deposition of Edward Grillot from the Hobart III litigation was reviewed.

3. If you have any reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons. Provide their current, or last known, address, telephone numbers, and e-mail addresses.

Response: Devco does not know of anyone who is available to provide a more detailed response.

4. Provide names, addresses, telephone numbers, and e-mail addresses of any individuals, including former and current employees, who may be knowledgeable about Respondent's operations and hazardous substances handling, storage and disposal practices.

Response: Rob Fickert, 1405 Haven Hill Road, Dayton, Ohio 45459 (937-469-1390) and Keith Fickert, 8616 Haven Hill Road, Dayton, OHio 45459 (937-469-1390).

5. State the date(s) on which the Respondent sent, brought or moved drums and/or hazardous substances to the South Dayton Dump and Landfill (SDDL) Site and the names, addresses, telephone numbers, and e-mail addresses of the person(s) making arrangements for the drums and/or hazardous substances to be sent, brought or moved to the SDDL Site.

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Response: Devco did not transport any drums containing hazardous substances or any other hazardous substances to the Site. Per the deposition of Edward Grillot, A.E. Fickert disposed of general construction debris which was hauled in pickup trucks and unloaded by hand at the Site for a brief period of time. (Grillot Vol. II at p. 687). Devco has no documents or information in its possession to substantiate any of Mr. Grillot's allegations.

6. Did Respondent haul or send materials to SDDL in vehicles it owned, leased or operated? If yes, during what time periods did this occur? If no, how did Respondent transport materials to SDDL? Identify the hauler(s) and provide the addresses, telephone numbers, and e-mail addresses of these entities.

Response: See response to Request No. 5.

7. List all federal, state and local permits and/or registrations and their respective permit numbers issued to Respondent for the transport and/or disposal of materials.

Response: A.E. Fickert obtained construction permits from the City of Dayton and Montgomery County to complete construction and repair projects. Devco has no such permits in its possession and no knowledge of any hazardous waste ever being removed to the Site.

8. Which shipments or arrangements were sent under each permit? If what happened to the hazardous substances differed from what was specified in the permit, please state, to the best of your knowledge, the basis or reasons for such difference.

Response: See response to Requests No. 5 and 7.

9. Were all hazardous substances transported by licensed carriers to hazardous waste Treatment Storage and Disposal Facilities permitted by the U.S. EPA?

Response: See response to Requests Nos. 5 and 7.

10. List all federal, state and local permits and/or registration and their respective permit numbers issued for the transport and/or disposal of wastes.

Response: See response to Requests Nos. 5 and 7.

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11. Does your company or business have a permit or permits issued under Resource Conservation and Recovery Act? Does it have or has it ever had, a permit or permits under the hazardous substance laws of the State of Ohio? Does your company or business have an EPA Identification Number, or an identification number supplied by the State Environmental Protection Agency? Supply any such identification number(s) your company or business has.

Response: See response to Requests Nos. 5 and 7. Additionally, Devco states that no such permit is in its possession for the relevant time period.

12. Identify whether Respondent ever filed a Notification of Hazardous Waste Activity with the EPA or the corresponding agency or official of the State of Ohio, the date of such filing, the wastes described in such notice, the quantity thereof described in such notice, and the identification number assigned to such facility by EPA or the state agency or official.

Response: See response to Request Nos. 5 and 7. Additionally, Devco states that no such notification was filed for the relevant time period.

13. Identify all individuals who currently have and those who have had responsibility for Respondent's environmental matters (e.g. responsibility for the disposal, treatment, storage, recycling, or sale of Respondent's wastes). Also provide each individual's job title, duties, dates performing those duties, supervisors for those duties, current position or the date of the individual's resignation, and the nature of the information possessed by such individuals concerning Respondent's waste management. For each individual identified in response to this question provide the current or most recent known address, telephone number and e-mail address.

Response: See response to Requests Nos. 1 and 3.

14. Describe the containers used to take any type of waste from Respondent's operation, including but not limited to:
- a. the type of container (e.g. 55 gal. drum, dumpster, etc.);
 - b. the colors of the containers;
 - c. any distinctive stripes or other markings on those containers;

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- d. any labels or writing on those containers (including the content of those labels);
- e. whether those containers were new or used; and
- f. if those containers were used, a description of the prior use of the containers.

Response: See response to Request No. 5.

15. For any type of waste describe Respondent's contracts, agreements, or other arrangements for its disposal, treatment, or recycling. Provide copies of all documents relating to the transportation or disposal of said waste, including correspondence and manifests. Include all correspondence and records of communication between Respondent and Cyril Grillot, Kenneth Grillot, Alcine Grillot, or Horace Boesch, Sr.

Response: See response to Requests Nos. 5 and 7.

16. Provide copies of such contracts and other documents reflecting such agreements or arrangements.
- g. State where Respondent sent each type of its waste for disposal, treatment, or recycling.
 - h. Identify all entities and individuals who picked up waste from Respondent or who otherwise transported the waste away from Respondent's operations (these companies and individuals shall be called "Waste Carriers" for purposes of this Information Request).
 - i. If Respondent transported any of its wastes away from its operations, please so indicate and answer all questions related to "Waste Carriers" with reference to Respondent's actions.
 - j. For each type of waste specify which Waste Carrier picked it up.
 - k. For each type of waste, state how frequently each Waste Carrier picked up such waste.

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- l. For each type of waste state the volume picked up by each Waste Carrier (per week, month, or year).
- m. For each type of waste state the dates (beginning & ending) such waste was picked up by each Waste Carrier.
- n. Provide copies of all documents containing information responsive to the previous seven questions.
- o. Describe the vehicles used by each Waste Carrier to haul away each type of waste including but not limited to:
 - i. the type of vehicle (e.g., flatbed truck, tanker truck, containerized dumpster truck, etc.);
 - ii. names or markings on the vehicles; and
 - iii. the color of such vehicles.
- j. Identify all of each Waste Carrier's employees who collected Respondent's wastes.
- k. Indicate the ultimate disposal/recycling/treatment location for each type of waste.
- l. Provide all documents indicating the ultimate disposal/recycling/treatment location for each type of waste.
- m. Describe how Respondent managed pickups of each waste, including but not limited to:
 - i. the method for inventorying each type of waste;
 - ii. the method for requesting each type of waste to be picked up;
 - iii. the identity of (see Definitions) the waste carrier employee/agent contacted for pickup of each type of waste;

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- iv. the amount paid or the rate paid for the pickup of each type of waste;
 - v. the identity of (see Definitions) Respondent's employee who paid the bills; and
 - vi. the identity of (see Definitions) the individual (name or title) and company to whom Respondent sent the payment for pickup of each type of waste.
- n. Identify the individual or organization (i.e., the Respondent, the Waste Carrier, or, if neither, identify such other person) who selected the location where each of the Respondent's wastes were taken.
- o. State the basis for and provide any documents supporting the answer to the previous question.
- p. Describe all wastes disposed by Respondent into Respondent's drains including but not limited to:
- i. the nature and chemical composition of each type of waste;
 - ii. the dates on which those wastes were disposed;
 - iii. the approximate quantity of those wastes disposed by month and year;
 - iv. the location to which these wastes drained (e.g. on-site septic system, onsite storage tank, pre-treatment plant, Publicly Owned Treatment Works (POTW), etc.); and
 - v. whether and what pretreatment was provided.
- q. Identify any sewage authority or treatment works to which Respondent's waste was sent.
- r. If not already provided, specify the dates and circumstances when Respondent's waste was taken to the SDDL Site, and identify the

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companies or individuals who brought Respondent's waste to the Site. Provide all documents which support or memorialize your response.

Response: For questions 16 g-r see generally Requests Nos. 5 and 7.

17. Provide all Resource Conservation and Recovery Act (RCRA) Identification Numbers issued to Respondent by EPA or a state for Respondent's operations.

Response: See response to Request Nos. 5 and 7. Additionally, Devco states that no such Identification Numbers are known to exist.

18. Identify (see Definitions) all federal offices to which Respondent has sent or filed information about hazardous substance or hazardous waste.

Response: See response to Request Nos. 5 and 7. Additionally, Devco states that no such information is believed to exist.

19. State the years during which such information was sent/filed.

Response: See response to Request No. 18.

20. Identify (see Definitions) all state offices to which Respondent has sent or filed hazardous substance or hazardous waste information.

Response: See response to Request Nos. 5 and 7.

21. State the years during which such information was sent/filed.

Response: See response to Request No. 20.

22. List all federal and state environmental laws and regulations under which Respondent has reported to federal or state governments, including but not limited to: Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., (TSCA); Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 1101 et seq., (EPCRA); and the Clean Water Act (the Water Pollution Prevention and Control Act), 33 U.S.C. Sections 1251 et seq.; Solid Waste and Infectious Waste Regulations, OAC 3745-27 (former rule EP-20); Licenses for Solid Waste, Infectious Waste Treatment, or Construction and Demolition Debris Facilities,

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OAC 3745-37 (former rule EP-33); Solid and Hazardous Wastes, ORC 3734-01 through 3734-11; Open Burning Standards, OAC 3745-19-03.

Response: See response to Request Nos. 5 and 7.

23. Identify the federal and state offices to which such information was sent.

Response: See response to Request No. 22.

Should you have any questions regarding the foregoing, please do not hesitate to give me a call.

Very truly yours,



David P. Pierce

DPP/map

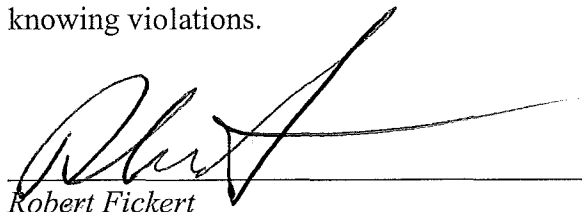
cc: Thomas Nash, Esq. (via email)

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CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A handwritten signature in black ink, appearing to read 'Robert Fickert', is written over a horizontal line.

Robert Fickert
President and Owner, Fickert Devco, Inc.

3/23/2015
Date